

Town of Winchester
Zoning Board of Adjustment
Minutes
9-22-16

Meeting opened: 7:06pm.

Members present: Lou Fox (Chair), Jason Cardinale (V. Chair), Becky Roy, Bill McGrath and Ken Cole (7:12pm). Mike Doherty is an alternate present. Margaret Sharra is the Land Use Administrator.

Public: Wendy Pelletier, Kim Whitaker, Sandi McGrath, Mike Coope, Denis Murphy, Julia Ferrari, Kim Gordon, Chris Thompson, Paul Dobbs, Barry Montgomery and a few others.

First order of business: The Chairman sits M. Doherty as an acting member. The board reviews the minutes of 9-8-16 for approval. **B. McGrath moves to approve, J. Cardinale seconds. The vote is 5 yes.**

Second order of business: The board reviews an application for a variance regarding frontage submitted by Wendy Pelletier for the Lobdell's and Kim Whitaker. B. McGrath recuses himself because he is an abutter. The LUA notes all notices were sent and posted and returned. The property is located at 39 Headlands Road, map 33 lots 10 & 12. All members received the application and supporting materials prior to the meeting. There are letters of representation from all owners.

L. Fox moves to accept the application as complete, M. Doherty seconds. The vote is 4 yes. L. Fox moves to open the public hearing, J. Cardinale seconds. The vote is 4 yes.

Ken Cole arrives.

Wendy Pelletier presents the proposal. A variance is required to get an approval for a boundary line adjustment from the PB to adjust the frontage of these two lots. Neither lot has enough frontage to meet today's standards. This tiny triangular piece has nothing to do with water or septic for this property or others.

The Lobdell's lot has a small triangular piece that goes in front of the Whitakers lot. The Whitakers and previous owners have always used this piece as their own. Both property owners think now is the time to straighten out the line. Bill McGrath, abutter, informs the board about the history of this area. He believes this angle is from an old road in the early 1900's.

Wendy speaks to the 5 criteria (which is also written and attached) and says there is a huge negative impact to lot 12 because lot 10 land is in front of their house, this diminishes the value of lot 12, it restricts the use of lot 12 and asks to just be permitted to straighten out the boundary line. Bill McGrath suggests the board approve this application because it makes both lots have clear obvious boundary lines and it just makes sense.

There are no questions from the public.

L. Fox moves to close the hearing, J. Cardinale seconds. The vote is 5 yes. 7:19pm.

L. Fox moves to approve the variance application because the 5 criteria for a variance have been met. B. Roy seconds. K. Cole includes in the reasoning that granting the variance is only fair to the property owners and substantial justice is done. The vote is 5 yes.

Third order of business: The board reviews an application for a variance regarding setbacks submitted by Bill and Sandi McGrath. B. McGrath recuses himself from the board. The property is located at 77 Headlands Road, map 9 lot 11-5. The LUA notes all notices were posted and sent. One abutter, Denigris, did not return the card. All members received the application and supporting materials prior to the meeting.

L. Fox moves to accept the application as complete, J. Cardinale seconds. The vote is 5 yes.

L. Fox moves to open the public hearing, M. Doherty seconds. The vote is 5 yes. 7:24pm.

Bill McGrath presents the proposal. He is asking to encroach the setback from the town ROW by 8ft. Zoning requires a 30' setback. Only a corner of his proposed garage would be in the setback. He explains his reasons for this placement based on lay of the land. He introduces photos of the site. B. Roy looks over the photos with Bill and confirms the placement of the stakes shown on the photos. This would be a 30x30 2 car garage with storage above. He has received approval from the shoreland bureau. The upstairs area would not be future living space. Bill speaks to the 5 criterion which was submitted in written form.

He states this is not contrary to the spirit of the ordinance since only a corner of his garage would be in the setback. There would be no negative impact on the public interest. The garage would be aesthetically pleasing. It

will not negatively impact the neighborhood or harm to the general public. There would be a loss to the property owner if the variance was not granted. There would be no diminution to property values. Literal enforcement of the ordinance would require the garage to move down slope and would be more costly due to a high concrete wall and it would be ugly.

There are no comments from the public.

J. Cardinale moves to close the hearing, M. Doherty seconds. 7:37pm. The vote is 5 yes.

K. Cole notes the board denied a slightly different request last year on Warwick Road. This land of McGrath is different and the location is different. This is a unique situation. L. Fox concurs. B. Roy comments the setback distance is still 37' off the road. This wider ROW still has buildings set way off the road and does not see a problem. L. Fox contends if the garage were built elsewhere the large concrete wall would be unsightly. J. Cardinale reiterates there will be no living area above the garage. M. Doherty confirms there would be clear visibility; this would not block any site distance.

L. Fox moves to approve the variance request, J. Cardinale seconds. The vote is 5 yes.

Fourth order of business: The board reviews an application for an appeal from an administrative decision regarding the decision of the Historic District Commission (HDC) permitting the demolition of 14 Michigan Street map 26 lot 89. The LUA informs the board all notices were posted and sent. All Certified cards were returned except 1, Thackston. The HDC and BOS were told of this hearing. All ZBA members received a copy of the application and supporting documentation submitted by Mr. Dobbs last week. The LUA also included copies of HDC minutes and all HDC documentation presented to them. The board was also informed to come in and view and listen to 2 CD's submitted by the applicant.

B. McGrath moves to accept the application as complete, B. Roy seconds.

Discussion:


B. McGrath confirms the application was submitted in time. The application was received on 9/7/16.

K. Cole questions if the applicants have standing. He reads from RSA 676:5(I). #5 refers to a court case where the judge ruled residents who are non-abutters have no standing. The board discusses this at length. They question if they should hear it or not and whether the application should be accepted as complete as these applicants are not abutters. The LUA questions the process. She wants to make sure the board follows the correct legal process. At the request of Barry Montgomery the LUA reads from the Zoning Ordinance section #10 appeals are to the ZBA. K. Cole and the LUA explain the difference between an ordinance and a RSA. No one is disagreeing appeals go the ZBA, the question is standing, who submitted the appeal. K. Cole and L. Fox recall an application before the board a few years ago regarding a HDC decision where the board determined the applicants did not have standing. K. Cole reads more of RSA 676:5 and the supporting cases listed. K. Cole questions why the board should hear the case when the applicants have no standing. Mr. Thompson asks a question of process of accepting the application. K. Cole tries to explain. The board decides to obtain legal advice to be assured they follow the proper process. The LUA will contact town counsel.

J. Cardinale moves to continue the application review and hearing to Oct.3, 2016 at 5:30pm. B. McGrath seconds. The vote is 5 yes.

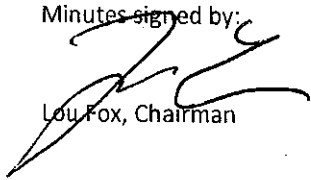
J. Cardinale moves to adjourn, B. McGrath seconds. The vote is 5 yes. 8:16pm.

Minutes respectfully submitted:

Margaret Sharra, LUA 

Minutes approved by the board: 10/3/16

Minutes signed by:


Lou Fox, Chairman